



COMMONWEALTH OF VIRGINIA

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DMME Releases Draft Inman Rockfall Fatality Investigation Report

Agency to present draft findings, recommendations to legislative panel in November 4 public meeting

Big Stone Gap, VA – Today the Department of Mines, Minerals and Energy (DMME) released the draft report of its investigation into the August 20, 2004, mining-related death of three-year old Inman resident, Jeremy Kyle Davidson. The Department will present its findings to a legislative panel appointed by Governor Mark Warner in a public meeting the first week in November. The public meeting will be held at 6 p.m. at Mountain Empire Community College's Goodloe Center on Thursday, November 4, 2004.

DMME's report will be presented to a panel of coalfield legislators that Governor Mark Warner, along with Delegate Clarence "Bud" Phillips, asked to hear the report. The panel will include delegates Terry Kilgore, Clarence "Bud" Phillips, and Jackie Stump and senators William Wampler and Phillip Puckett. Secretary of Commerce and Trade Michael Schewel will represent the Governor and moderate the panel. During the public meeting on November 4, DMME officials will present their draft investigation findings and recommendations to the panel and the public. Following the presentation, the legislators and the public will have an opportunity to make comments.

After the meeting, DMME will review the comments it received, along with its conclusions from the investigation and prepare the final report.

Summary of DMME draft investigation conclusion

On August 20, 2004, shortly before 2:41 a.m., Jeremy Kyle Davidson, the three-year-old son of Dennis and Cindy Davidson of Inman, Virginia, was killed by a large rock dislodged from the A & G Strip No. 13 mine. The rock penetrated his bedroom wall

and struck the bed in which he was sleeping. The rock, weighing an estimated 1,000 pounds, was dislodged during reconstruction of a mine access road, which was not authorized under the company's surface coal mine permit. The rock rolled approximately 649 feet down a steep, wooded hillside, penetrated the rear exterior wall of the child's bedroom, struck the bed where the child was sleeping and caused fatal injuries. The rock was likely dislodged by a bulldozer while pushing out the old existing berm on the access road as it was being upgraded (widened) to haul coal.

Mine personnel interviewed indicated they were aware that there were residents below the road, yet no precautions were taken to avoid material being pushed over or from being dislodged. August 21, 2004, interview statements indicate the mine and company personnel were aware of the potential hazard. Some statements made by the mine personnel contradict conditions observed on the ground at the site.

Based upon the cumulative failures of the company to take prudent precautions in an area known to be a potential hazard area for the residents below, DMME has concluded that A & G demonstrated gross negligence by committing the following unauthorized actions that resulted in the death of Jeremy Kyle Davidson. A & G conducted the reconstruction work at night above occupied dwellings; assigned a dozer operator inexperienced in road construction to perform the work in an area of known potential hazard to residents below; widened the existing access road to haul coal; reconstructed the road without an approved plan; failed to visually monitor the placement of material to prevent placing it over the hillside on the steep slope over 50%; constructed the road embankment on a slope greater than 36% without the required keyway cut and two foot compacted lifts; and caused a rock to be dislodged that rolled down the hillside, entered the residence of Dennis and Cindy Davidson, striking their son's bed; and resulting in fatal injuries to Jeremy Kyle Davidson.

Recommendations

As a result of this accident investigation, the Department of Mines, Minerals and Energy (DMME) amended some of their processes and has several recommendations for actions that should be taken by coal mining companies, and for changes to the laws and regulations governing coal mining in Virginia. DMME is offering these recommendations to help ensure that this type of accident will not happen again.

Full Compliance With Virginia's Existing Mining Laws and Regulations:

Virginia's coal mining safety and reclamation laws already contain requirements to ensure mining is conducted safely and is protective of the public health and safety. The existing requirements pertinent to this accident and to maintaining safe mining located on slopes above occupied houses and buildings include the following.

1. In accordance with the Virginia Coal Surface Mining Reclamation Regulations, 4 VAC 25-130-774.13, all revisions to a surface mining permit must be submitted to the DMME, Division of Mined Land Reclamation (DMLR) for approval. Construction or reconstruction of roads on a permitted mine site that would have a potential for adverse impacts on individuals or their rights, changes to operations or reclamation plans that may have adverse impacts not considered in the original permit approval, or changes to any issue that was subject to public controversy or citizen or other agency objections are considered significant revisions. The reconstruction of the road on the A & G Strip No. 13 should have been addressed in the November 25, 2002 significant revision that included this area of the access

road. Significant revisions require newspaper notice to be published for four consecutive weeks followed by a 30-day public comment period. An application for a permit revision cannot be approved unless the applicant demonstrates and the DMLR finds that the revised operation will meet regulatory requirements.

2. In accordance with the Coal Surface Mining Reclamation Regulations, 4 VAC 25-130, sections 816.99(a), 817.99(a), 816.102(a)(3), 817.102(a)(3), 816.150, 817.150, 815.151, 817.151, and 824.11(a)(6), all operations must ensure adequate slope stability and provide effective protection from dislodged material that could impact public safety and private property. Prior to disturbance of a slope area above a private residence the permittee/operator must have obtained the necessary approvals from the DMLR. The operations must be conducted in accordance with the performance standards in the regulations cited above and in accordance with the DMME Division of Mines (DM) approved ground control plan.
3. In accordance with the Virginia Coal Mine Safety Act, section 45.1-161.287, all surface coal mining operations must establish and follow a ground control plan that ensures a safe work area. This plan must be consistent with prudent engineering designs, and ensure wall and bench stability and maintain a safe overall slope. The plan must address how loose hazardous material from the tops of banks (and other areas) is to be handled. This plan should include a map showing the location of private dwellings and other occupied buildings, public and other roads used for vehicle travel, gas wells and transmission lines, and any other locations where ground-disturbing mining activity could affect worker and public safety and private property. When work is planned in these locations, the foreman should provide clear instructions for work procedures and safety precautions and ensure that these procedures and practices are followed.
4. In accordance with the Virginia Coal Mine Safety Act, section 45.1-161.269, equipment must be operated in a prudent manner and consistent with the conditions that exist in the area and the type of equipment being used. When work is planned on slope areas, this means that operators should use equipment and processes that are properly designed to perform the work and prevent accidental dislodging of materials.
5. In accordance with the Virginia Coal Mine Safety Act, sections 45.1-161.256, 45.1-161.257 and 45.1-161.258, a certified person at a surface coal mine must complete an on-shift examination of the work area of the mine to identify any hazardous conditions. The surface foreman at the mine must take prompt action to have any hazardous conditions corrected, barricaded or posted with warning signs. Any imminent danger that cannot be removed within a reasonable time must be reported to the Chief of the DMME Division of Mines by the quickest available means.

Proposed Amendments to Virginia's Coal Mining Laws and Regulations To Increase Public Safety Protection

There are some areas where DMME has found the Virginia Coal Mine Safety Act, the Virginia Coal Surface Mining Control and Reclamation Act, and the Coal Surface Mining Regulations should be amended to increase the safety of operations that are located on slopes above occupied houses and buildings. Statutory changes will require

legislative action. DMME will form a working committee to address any regulatory amendments recommended as a result of this investigation.

Virginia Coal Mine Safety Act

1. Section 45.1-161.287 of the Virginia Coal Mine Safety Act should be amended to require mine operators to submit more detailed ground control plans for approval by the DMME Division of Mines. In addition to current requirements, the ground control plans should address (i) how residents or occupants of private dwellings or other occupied buildings down slope from ground disturbing operations will be notified when ground-disturbing work upslope from the buildings will take place and any actions required to protect the residents or occupants during the work, and (ii) how areas with ground-disturbing work up slope from residences, other occupied buildings, roads, or other areas in which persons will congregate, work, or travel will be controlled to protect the public safety.

Mine operators could take a number of actions to comply with this new proposed statutory requirement. For example, mine operators could notify the residents or occupants located down slope from the work at least three hours before ground disturbing work is to begin of (i) the type of work to be performed; (ii) the types of precautions being used to prevent material from becoming dislodged above their residence, and (iii) the length of time that the work is expected to last. The mine operator would need to maintain a written record of the notifications, including the names of the individual(s) who made the notifications, the persons notified, the time of the notifications, the time that the work is to be started, and the method(s) used to notify each individual. As for control of the work, mine operators could mark along the perimeter of any area to be disturbed located above the private dwellings or occupied buildings with visible markers (separate from permit boundary markers) indicating the limit to which material could be pushed, hauled, or otherwise disturbed. Such markers would need to be distinctive and of adequate size and height to be visible to the operator of any type of equipment to be used in the area. In lieu of using such markers, the work could be monitored by a spotter to prevent accidental dislodging and travel of material down the slope, or the operator could notify and evacuate affected residents or occupants at all times that material is being pushed, dumped, loaded, or otherwise disturbed.

2. Sections 45.1-161.12, 45.1-161.14, and 45.1-161.21 of the Virginia Coal Mine Safety Act should be amended to authorize the Chief of the DMME Division of Mines to require individual miners to complete training to abate individual violations and require coal mine operators to implement action plans to address hazardous conditions or practices.
3. Section 45.1-161.21 of the Virginia Coal Mine Safety Act should further be amended to empower the Chief to compel attendance of witnesses and administer oaths during investigations of accidents and willful violations of the Coal Mine Safety Act. This authority is currently vested with individual mine inspectors in section 45.1-161.80.

4. Section 45.1-161.64 of the Virginia Coal Mine Safety Act should be amended to require operators of surface coal mines to annually submit an updated map of each surface mine. Currently, operators of surface coal mines only must submit the map when the mine will intersect with underground workings.
5. Section 45.1-161.257 of the Virginia Coal Mine Safety Act should be amended to strengthen the requirements that mine examination records be countersigned by a person responsible for safety at a mine. The amendment should require that the supervisor of the examiner creating the records, or another person with equivalent authority to the supervisor, to promptly read and countersign the records and ensure that action necessary to eliminate or control any hazardous condition found during the examination has been taken.

Virginia Coal Surface Mining Control and Reclamation Act

The DMME, DMLR operates the coal surface mining reclamation program under primacy (federal approval and oversight) from the federal Office of Surface Mining Reclamation and Enforcement (OSMRE). In order to maintain primacy, Virginia must maintain its law and regulations as effective as the federal Surface Mining Control and Reclamation Act and federal surface mining regulations. The Virginia General Assembly, in passing the Virginia Surface Mining Control and Reclamation Act, stated, as described in a court decision related to the Virginia Act, that its “intent was clearly to enact a statute that conformed to the federal act, but that was no more restrictive than the federal act”. (See *Brown v. Red River Coal Co.*, 7 Va. App. 331, 373 S.E.2d 609 (1988)) Based on this federal and state legislative direction, DMME is limited in its ability to amend its program. While the following legislative proposal would make the Virginia Act more restrictive than the federal act, DMME believes that actions that cause injury to the public are sufficiently different from other violations of the Act that a higher level of penalty is called for.

Section 45.1-246.A of the Virginia Surface Control and Reclamation Act should be amended to provide for a two-tier civil penalty assessment. For violations that result in personal injury or fatality to the public, the civil penalty ceiling should be raised to \$70,000 per violation. All other violations would remain subject to the existing \$5,000 dollar limit. The new tier of penalties would use a similar point system to the current system used to determine the actual amount of the civil penalty. The DMME, DMLR would be given the ability to waive the point system and assess the maximum \$70,000 penalty if circumstances warrant.

Virginia Coal Surface Mining Reclamation Regulations

Amend 4 VAC 25-130-816.11, Signs and markers, to require permanent permit boundary markers be placed around the perimeter of a permit. Each marker should be visible from the adjacent markers. Permit markers that are located on steep slopes above private dwellings or other occupied buildings shall be made or marked with fluorescent or reflective paint or material to increase the markers’ night visibility.

Copies of the draft report are available on CD for \$1.00 by contacting the Department of Mines, Minerals and Energy Customer Assistance Center at (276) 523-8235. Paper copies are available for \$5.00.